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HOUSE BILL 145

48TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2008

INTRODUCED BY

Thomas A. Garcia

AN ACT

RELATING TO TAXATION; CREATING THE SPORTS AND RECREATION FACILITY FINANCING ACT; PROVIDING A MECHANISM TO GENERATE FUNDS TO DESIGN, CONSTRUCT, EQUIP, FURNISH, LANDSCAPE, OPERATE AND MAINTAIN A SPORTS AND RECREATION FACILITY; DECLARING AN EMERGENCY.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. SHORT TITLE.--This act may be cited as the "Sports and Recreation Facility Financing Act".

Section 2. DEFINITIONS.--As used in the Sports and Recreation Facility Financing Act:

A. "local governing body" means the governing body of a qualified municipality authorized pursuant to the provisions of the Sports and Recreation Facility Financing Act to impose sports and recreation facility fees;

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1 B. "lodging facility" means a hotel, motel or motor
2 hotel; a bed and breakfast facility; an inn; or any other
3 facility offering rooms for payment of rent or other
4 consideration;

5 C. "qualified municipality" means an incorporated
6 municipality with a population of more than one thousand but
7 less than one thousand fifty according to the most recent
8 federal decennial census and that is located in a class B
9 county;

10 D. "room" means a unit of a lodging facility, such
11 as a hotel room;

12 E. "sports and recreation facility fee" means the
13 fee imposed by a local governing body pursuant to the Sports
14 and Recreation Facility Financing Act on vendees for the use of
15 lodging facilities;

16 F. "vendee" means a person who rents or pays
17 consideration to a vendor for use of a room; and

18 G. "vendor" means a person or the person's agent
19 who furnishes rooms for occupancy for consideration.

20 Section 3. AUTHORIZATION--SPORTS AND RECREATION FACILITY
21 FEE IMPOSITION--LOCAL GOVERNING BODY.--A local governing body
22 may impose a sports and recreation facility fee if the local
23 governing body has enacted an ordinance to impose a sports and
24 recreation facility fee and the ordinance has been approved by
25 referendum as required in the Sports and Recreation Facility

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1 Financing Act.

2 Section 4. IMPOSITION OF SPORTS AND RECREATION FACILITY
3 FEE--USE OF PROCEEDS--REFERENDUM.--

4 A. A local governing body may impose by ordinance a
5 fee on the use of a room located within a qualified
6 municipality. The fee may be referred to as the "sports and
7 recreation facility fee". The amount of the sports and
8 recreation facility fee shall not exceed two and four-tenths
9 percent of the gross room charge for each day the room is
10 occupied by a vendee. The sports and recreation facility fee
11 shall be imposed for a period of not more than twenty years
12 from the effective date of the ordinance imposing the sports
13 and recreation facility fee.

14 B. An ordinance imposing the sports and recreation
15 facility fee shall go into effect only after a referendum on
16 the question of imposing the sports and recreation facility fee
17 is held and a majority of the qualified electors voting on the
18 question votes in favor of imposition of the sports and
19 recreation facility fee.

20 C. The local governing body shall adopt a
21 resolution calling for an election on the question of imposing
22 the sports and recreation facility fee within seventy-five days
23 of the date the ordinance is adopted.

24 D. The question of imposing the sports and
25 recreation facility fee may be submitted to the voters as a

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1 separate question at a general election or at a special
2 election called for that purpose by the local governing body.
3 If a special election is called, it shall be called, conducted
4 and canvassed in substantially the same manner as provided by
5 law for municipal elections. If a majority of the voters
6 voting on the question approves the question to impose the
7 sports and recreation facility fee, the ordinance shall become
8 effective in accordance with applicable law. If the question
9 of imposing the sports and recreation facility fee fails, the
10 local governing body shall not again propose the imposition of
11 the sports and recreation facility fee for a period of one year
12 from the date of the election.

13 E. The question of imposing the sports and
14 recreation facility fee shall include the uses for which the
15 fee will be used.

16 F. A sports and recreation facility fee imposed
17 pursuant to this section shall be reviewed by the local
18 governing body annually.

19 G. A local governing body shall not decrease the
20 sports and recreation facility fee while revenue bonds to which
21 the revenue of the sports and recreation facility fee is
22 pledged remain outstanding.

23 H. A local governing body shall dedicate the
24 revenue from the sports and recreation facility fee at the time
25 that the ordinance imposing the fee is enacted and limit the

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1 use of the revenue generated by the fee to the following:

2 (1) the design, construction, equipping,
3 furnishing, landscaping and other costs associated with the
4 development of a sports and recreation facility located within
5 the qualified municipality;

6 (2) payments of principal, interest or prior
7 redemption premiums due in connection with and any other
8 charges pertaining to revenue bonds authorized by the Sports
9 and Recreation Facility Financing Act, including payments into
10 a sinking fund or reserve fund required by the revenue bond
11 ordinance;

12 (3) costs of collecting and otherwise
13 administering the sports and recreation facility fee; provided
14 that the administrative costs shall not be paid if there are
15 current payments due pursuant to Paragraph (2) of this
16 subsection, and provided that no more than ten percent of the
17 revenue collected in a fiscal year shall be used to pay
18 administrative costs;

19 (4) operation costs of the sports and
20 recreation facility designed, constructed, equipped, furnished,
21 landscaped or otherwise developed with funding generated
22 pursuant to the Sports and Recreation Facility Financing Act;
23 and

24 (5) payments into a capital reserve fund
25 established for the future payment for capital maintenance and

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1 improvements and equipment replacement costs of the sports and
2 recreation facility located within the qualified municipality;
3 provided that no payments shall be made pursuant to this
4 paragraph if there are current payments due pursuant to
5 Paragraph (2) of this subsection.

6 Section 5. MANDATORY IMPOSITION--EXCEPTIONS.--

7 A. The sports and recreation facility fee shall be
8 imposed on all of the lodging facilities of a vendor that owns
9 three or more lodging facilities within a qualified
10 municipality in which the local governing body has imposed a
11 sports and recreation facility fee, regardless of the number of
12 rooms available for occupancy in the vendor's lodging
13 facilities.

14 B. The sports and recreation facility fee shall not
15 apply:

16 (1) if the local governing body by ordinance
17 exempts lodging facilities whose maximum daily room charge is
18 less than an amount stated in the ordinance;

19 (2) to rooms at institutions of the federal
20 government, the state or any political subdivision of the
21 federal government or the state;

22 (3) to rooms at religious, charitable,
23 educational or philanthropic institutions or other nonprofit
24 organizations, including rooms at summer camps operated by such
25 organizations;

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1 (4) to clinics, hospitals or other medical
2 facilities;

3 (5) to privately owned and operated
4 convalescent homes or homes for the aged, infirm, indigent or
5 chronically ill; or

6 (6) except for vendors described in Subsection
7 A of this section, if the vendor does not offer at least three
8 rooms at its lodging facility.

9 Section 6. COLLECTION OF SPORTS AND RECREATION FACILITY
10 FEE.--

11 A. A vendor providing rooms in a qualified
12 municipality in which the local governing body has imposed a
13 sports and recreation facility fee shall collect the fee on
14 behalf of the local governing body and shall remit the fees
15 collected to the local governing body on or before the twenty-
16 fifth day of the month following the month in which the fees
17 are collected along with the occupancy tax also collected.

18 B. The sports and recreation facility fee shall be
19 collected by a vendor from vendees as a room surcharge at the
20 time that rent is collected by the vendor and shall be
21 accounted for separately from the rent fixed by the vendor for
22 the rooms.

23 Section 7. AUDIT OF VENDORS.--A local governing body
24 imposing a sports and recreation facility fee shall include
25 verification of the collection of the correct sports and

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1 recreation facility fee in any audit of a vendor conducted
2 pursuant to Section 3-38-17.1 NMSA 1978.

3 Section 8. FINANCIAL REPORTING.--The chief financial
4 officer of a local governing body assessing a sports and
5 recreation facility fee shall report to the local government
6 division of the department of finance and administration on a
7 quarterly basis any expenditure of sports and recreation
8 facility funds.

9 Section 9. ENFORCEMENT.--

10 A. An action to enforce the Sports and Recreation
11 Facility Financing Act may be brought by:

12 (1) the attorney general or the district
13 attorney in the jurisdiction in which the qualified
14 municipality is located; or

15 (2) a vendor who is collecting the proceeds of
16 a sports and recreation facility fee in the county in which the
17 qualified municipality is located.

18 B. A district court may issue a writ of mandamus or
19 order an injunction or other appropriate remedy to enforce the
20 provisions of the Sports and Recreation Facility Financing Act.

21 C. The court shall award costs and reasonable
22 attorney fees to the prevailing party in a court action to
23 enforce the provisions of the Sports and Recreation Facility
24 Financing Act.

25 Section 10. COLLECTION OF DELINQUENCIES.--

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1 A. A local governing body shall by ordinance
2 provide that a vendor is liable for the payment of the proceeds
3 of sports and recreation facility fees that the vendor failed
4 to remit to the local governing body. Failure of the vendor to
5 collect the fee is not cause for the local governing body to
6 forgive sports and recreation facility fees due and owed by the
7 vendor. The ordinance shall provide for a civil penalty for
8 each occurrence of failure to remit sports and recreation
9 facility fees in the amount due. The civil penalty shall be an
10 amount equal to the greater of ten percent of the amount that
11 was not duly remitted to the local governing body or one
12 hundred dollars (\$100).

13 B. The local governing body may bring an action in
14 the district court of the judicial district in which the
15 qualified municipality is located for collection of amounts
16 due, including, without limitation, penalties on the amounts
17 due on the unpaid principal at a rate not exceeding one percent
18 per month, the costs of collection and reasonable attorney fees
19 incurred in connection with the court action to collect the
20 delinquent sports and recreation facility fees.

21 Section 11. LIEN FOR SPORTS AND RECREATION FACILITY FEE
22 PAYMENT--CERTIFICATE OF LIEN.--

23 A. The sports and recreation facility fee assessed
24 by a local governing body constitutes a lien in favor of that
25 local governing body upon the personal and real property of the

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1 vendor providing lodging facilities in that qualified
2 municipality. The lien may be enforced as provided in Sections
3 3-36-1 through 3-36-7 NMSA 1978. Priority of the lien shall be
4 determined by the date of filing.

5 B. Under process or order of the court, a person
6 shall not sell the property of a vendor without first
7 ascertaining from the clerk or treasurer of the qualified
8 municipality in which the vendor is located the amount of
9 sports and recreation facility fees due. Sports and recreation
10 facility fees due to the local governing body shall be paid
11 from the proceeds of the sale before payment is made to the
12 judgment creditor or any other person with a claim on the sale
13 proceeds.

14 C. The clerk or treasurer of the qualified
15 municipality shall furnish a certificate of lien to a person
16 applying for a certificate showing the amount of all liens in
17 the records of the qualified municipality against any vendor
18 pursuant to the Sports and Recreation Facility Financing Act.

19 Section 12. ORDINANCE REQUIREMENTS.--The ordinance
20 imposing a sports and recreation facility fee or any ordinance
21 amending the imposition of a sports and recreation facility
22 fee:

23 A. shall state:

24 (1) the rate of the sports and recreation
25 facility fee to be imposed;

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1 (2) the time, place and method for the payment
2 of the sports and recreation facility fee proceeds to the local
3 governing body;

4 (3) the accounts and other records to be
5 maintained in connection with the sports and recreation
6 facility fee;

7 (4) a procedure for making refunds and
8 resolving disputes relating to the sports and recreation
9 facility fee;

10 (5) the procedures for preservation,
11 destruction, inspection and investigation of records;

12 (6) vendor audit requirements;

13 (7) applicable civil and criminal penalties;

14 (8) a procedure for liens, distraint and sales
15 to satisfy those liens;

16 (9) that the ordinance is not effective until
17 the imposition of the sports and recreation facility fee has
18 been approved pursuant to a referendum in which a majority of
19 voters voting within the qualified municipality votes in favor
20 of imposition of the sports and recreation facility fee; and

21 (10) that the sports and recreation facility
22 fee shall be imposed for a period not exceeding twenty years
23 from the effective date of the ordinance imposing the sports
24 and recreation facility fee; and

25 B. shall provide other rights, privileges, powers,

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1 immunities and details relating to the collection of the sports
2 and recreation facility fee and the remittance of the proceeds
3 of that fee to the local governing body.

4 Section 13. REVENUE BONDS.--

5 A. Revenue bonds may be issued at any time by a
6 qualified municipality that has imposed a sports and recreation
7 facility fee to defray wholly or in part the costs authorized
8 by the Sports and Recreation Facility Financing Act. The
9 revenue bonds may be payable from, and payment may be secured
10 by, a pledge of and lien on the revenue derived from:

11 (1) the proceeds of the sports and recreation
12 facility fee of the qualified municipality dedicated to the
13 payment of revenue bonds for a sports and recreation facility
14 in the qualified municipality;

15 (2) a sports and recreation facility to which
16 the bonds pertain, after provision is made for the payment of
17 the operation and maintenance expenses of the sports and
18 recreation facility;

19 (3) that portion of the proceeds of the
20 occupancy tax of the qualified municipality available for
21 payment of revenue bonds pursuant to Section 3-38-23 NMSA 1978;

22 (4) any other legal available revenues of the
23 qualified municipality; or

24 (5) a combination of revenues from the sources
25 designated in this subsection.

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1 B. The bonds shall bear interest at a rate or rates
2 as authorized in the Public Securities Act, and the first
3 interest payment may be for any period authorized in the Public
4 Securities Act.

5 C. Except as otherwise provided in the Sports and
6 Recreation Facility Financing Act, revenue bonds authorized
7 pursuant to that act shall be issued in accordance with the
8 provisions of Sections 3-31-2 through 3-31-6 NMSA 1978.

9 Section 14. REFUNDING BONDS.--

10 A. A qualified municipality having issued revenue
11 bonds may issue refunding bonds payable from pledged revenues
12 authorized for the payment of the revenue bonds at the time of
13 the refunding or at the time of the issuance of the bonds being
14 refunded, as the local governing body may determine, regardless
15 of whether the revenue sources or the pledge of the revenues or
16 both are modified at the time of the refunding.

17 B. Refunding bonds may be issued for the purpose of
18 refinancing, paying and discharging all or a part of
19 outstanding bonds of one or more outstanding bond issues:

20 (1) for the acceleration, deceleration or
21 other modification of the payment of the obligations, including
22 capitalization of interest that is in arrears or about to
23 become due for any period not exceeding one year from the date
24 of the refunding bonds;

25 (2) for the purpose of reducing interest costs

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1 or effecting other economies;

2 (3) for the purpose of modifying or
3 eliminating restrictive contractual limitations pertaining to
4 the issuance of additional bonds or otherwise concerning the
5 outstanding bonds; or

6 (4) for any combination of the purposes set
7 forth in this subsection.

8 C. The interest on a bond refunded shall not be
9 increased to a rate in excess of the rate authorized in the
10 Public Securities Act and shall be paid as authorized in that
11 act.

12 D. Refunding bonds for any other purpose permitted
13 by the Sports and Recreation Facility Financing Act may be
14 issued separately or issued in combination in one series or
15 more.

16 E. Except as otherwise provided in the Sports and
17 Recreation Facility Financing Act, refunding bonds authorized
18 in that act shall be issued in accordance with the provisions
19 of Sections 3-31-10 and 3-31-11 NMSA 1978.

20 Section 15. PENALTIES.--A local governing body shall by
21 ordinance provide for penalties by creating a misdemeanor and
22 imposing a fine of not more than five hundred dollars (\$500) or
23 imprisonment for not more than ninety days or both for a
24 violation by any person of the provisions of the sports and
25 recreation facility fee ordinance for a failure to pay the

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1 sports and recreation facility fee that is due or failure to
2 remit the proceeds of the sports and recreation facility fee
3 that are due to the local governing body.

4 Section 16. EMERGENCY.--It is necessary for the public
5 peace, health and safety that this act take effect immediately.

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